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June 12, 2019

CC Docket No. 02-6
Supplemental Information to Petition for Appeal/Waiver of
a Decision by the Universal Service Administrative Company

To:

Ms. Marlene H. Dortch
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, DC 20554

From:

Billed Entity Number: 16055092
Applicant: Networkmaine
Contact: Anne Perloff
Email: anne.perloff@maine.edu
Phone: (207) 581-3584

Regarding:

FCC ID: 1042663339866
Appeal Date: 4/26/2019
Funding Year: 2018
Form 471 Application Number: 181003379
Funding Request Number: 1899026540

Dear Ms Dortch:

Networkmaine is submitting supplemental information to further support our appeal filed in CC Docket 02-6 on April 26, 2019.

Background

As we stated in our appeal letter, Networkmaine did not substantively modify the list of recipients contained in its RFP. Addendum #02 simply corrected the Up-link (E-LINE) Services table contained within the RFP and the complete list of recipients of service was not modified in any way.

Because the five entities in question (MORSE HIGH SCHOOL, ENFIELD STATION SCHOOL, PENQUIS VALLEY HIGH SCHOOL, WOODLAND JR/SR HIGH SCHOOL, and PENOBSCOT VALLEY HIGH SCHOOL) were already included in the scope of the RFP, correcting the Uplink (E-LINE) Service worksheet to include these five entities was not a material change that required the bidding clock to restart.

Networkmaine feels strongly that the action taken to correct the Up-link (E-LINE) Service table can be considered as a **correction of a clerical error**.

Defining Clerical Errors

While the regulations are silent on the question of whether changes to the RFP mandate the restarting of the 28 day bidding period, our research has identified instances where FCC Orders clarify the meaning of “clerical error.”

In April 2011, the FCC issued Order FCC 11-60 which defines that clerical and ministerial errors include “the kinds of errors that a typist might make when entering data from one list to another, such as mistyping a number, using the wrong name or phone number, ***failing to enter an item from the source list onto the application***, or making an arithmetic error.” (emphasis added)

The original master list contained over 700 sites total. Networkmaine’s failure to transcribe 5 entities from the master list onto the Uplink (E-LINE) Service table in the RFP is commensurate with the partial definition above of “failing to enter an item from the source list onto the application.” The number of entities we did not transcribe correctly represents less than 1% of the total entities.

In addition, the Order goes on to state in Footnote 12 that many more examples of correctable errors are found in an earlier FCC appeal Order designated Ann Arbor Public Schools, et al (DA 10-2354)¹.

The key paragraph of the Ann Arbor Public Schools decision reads:

These errors include: failing to timely notify USAC to correct a USAC clerical error, entering the wrong FCC Form 470 number, wrong billed entity number, or wrong billed entity

¹ Requests for Waiver and Review of Decisions of the Universal Service Administrator by Ann Arbor Public Schools et al.; Schools and Libraries Universal Service Support Mechanism, CC Docket No. 02-6, Order, 25 FCC Rcd 17319, 17319-20, para. 2, n.5 (WCB 2010) (permitting applicants to correct clerical errors like failing to enter an item from the source list onto the application)

number/worksheet number on their FCC Form 471; entering the wrong name or service provider identification number (SPIN); entering the wrong expiration date for a contract; erroneously characterizing the purchase and installation of equipment as a recurring service; making a calculation error; entering the monthly charge as the annual charge; entering the discounted annual price rather than the pre-discount annual price; entering the amount that a service provider was mistakenly temporarily charging rather than the contracted monthly rate; miscalculating its discount rate; failing to separately list a building where equipment was to be located; failing to enter a request for telecommunications service that was clearly indicated on its item 21 attachment; basing its block 5 funding requests on the wrong FCC Form 471 block 4 worksheet; selecting the wrong term or service; selecting the wrong category of service in its FCC Form 471; making a typographical error in recording the cost of ineligible equipment in response to a USAC request for additional data; failing to follow the correct procedure for modifying its FCC Form 471; mistakenly providing the wrong documentation concerning a purchase; and describing the service it purchased as for its entire district when it was only intended to serve a single elementary school.

Networkmaine believes that any of these examples are no more or less substantive than the clerical error that we discovered and addressed on the Uplink (E-LINE) Service table contained within our RFP.

In addition, USAC's own website² states that making minor, non-substantive updates to an RFP is an allowable change that does not require the 28-day competitive bidding clock to be restarted.

FCC Form 470 Corrections

Applicants that want to correct M&C errors that WILL NOT materially affect the competitive bidding process, need NOT file a new form and start a new 28-day waiting period. These allowable changes include:

- Editing an application name
- Changing the main contact person and/or technical contact person
- Making minor, non-substantive updates to a request for proposal (RFP) *

We further note that the Commission cited in the Aberdeen School District Order³ previous decisions to grant waivers to Petitioners' who generally argued in their petitions "that they made clerical or ministerial errors" and that the Commission has granted a waiver of program rules for technical violations of competitive bidding⁴.

² Ministerial and Clerical Errors. USAC website. Accessed June 4, 2019, <https://www.usac.org/sl/applicants/step01/clerical-errors.aspx>

³ Application for Review of the Decision of the Universal Service Administrator by Aberdeen School District et al.; Schools and Libraries Universal Service Support Mechanism, CC Docket No. 02-6, Order, 22 FCC Rcd 8757, para. 5, n. 18 (Aberdeen School District Order 2007)

⁴ See, e.g., Requests for Waiver and Review of Decisions of the Universal Service Administrator by Aberdeen School District et al.; Schools and Libraries Universal Support Mechanism, CC Docket No. 02-6, Order, 27 FCC Rcd 1878, 1941, para. 1 (WCB 2012) (granting waiver for a technical violation of the competitive bidding rules, and where there was no evidence of waste, fraud, and abuse)

Request for Relief

The Commission has long recognized that ministerial and clerical errors are often made by applicants participating in the E-Rate Program. As is the case in the Ann Arbor Public Schools decision, the Commission recognized that applicants should not be penalized for such ministerial and clerical errors.

Networkmaine respectfully requests a reversal of USAC's original funding decision to deny FRN #1899026540 and for the Commission to direct USAC to issue a Revised Funding Commitment Decision Letter with a favorable decision to fund the eligible request.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Jeff Letourneau', written over a horizontal line.

Jeffrey Letourneau

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